

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANGEL ARAGON PEREZ,

Petitioner,

v.

No. CV 09-0112 BB/CEG

TIMOTHY HATCH, Warden, and
GARY KING, Attorney General of the
State of New Mexico,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

The Magistrate Judge filed her Proposed Findings and Recommended Disposition on May 14, 2009. See docket no. 33. The Proposed Findings and Recommended Disposition recommends that the Court deny Angel Perez's Petition for Writ of Habeas Corpus as a second or successive petition filed without receiving prior authorization from the Tenth Circuit Court of Appeals. See id. at 4. Specifically, the Magistrate Judge found that Mr. Perez filed a petition for federal habeas corpus relief in 2001 wherein he challenged the same state court conviction and sentence in the Sixth Judicial District, Luna County, Cause No. CR-1998-242, as he does in the current petition. See id. at 2-3 (citing Angel Perez v. Lawrence Tafoya and Patricia Madrid, No. CV 01-808 MV/LFG). The Magistrate Judge found that in No. CV 01-808 MV/LFG, United States Magistrate Judge Lorenzo Garcia recommended that Mr. Perez's petition be denied and the case be dismissed with prejudice, and on February 28, 2002, United States District Judge Martha Vazquez adopted the Magistrate Judge's recommendation and entered judgment against Mr. Perez. See id., docket nos. 19, 26 and 27. The Magistrate Judge also recommends that Respondents' "Motion to Hold the Filing of an Answer in Abeyance Pending the Disposition of

Respondents' Motion to Dismiss Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2244 as a Second or Successive Petition," Petitioner's "Motion for Appointment of Private Lawyer," Petitioner's "Motion to Hold Hearing," and Petitioner's "Motion for Transfer" be denied as moot. See docket no. 33 at 4-5 (addressing docket nos. 21, 23, 27, and 28). On May 26, 2009, Petitioner filed objections to the Proposed Findings and Recommended Disposition. See docket no. 36.

The Court has carefully reviewed Petitioner's objections de novo and finds that they are not well-taken. Petitioner's objections state that "[i]n regards to the Tenth Circuit, the Petitioner isn't prejudice of the state color of law or any petition or appeal if the United States District Court of New Mexico of the fairness," however, most of the objections focus on an ineffective assistance of counsel claim. Id. at 4. The objections do not address the Magistrate Judge's finding that Mr. Perez has filed a second or successive petition without prior authorization from the Tenth Circuit Court of Appeals. See id. at 1-4.

Mr. Perez, pursuant to 28 U.S.C. § 2244(b)(3)(A), must apply to the United States Court of Appeals for the Tenth Circuit for an order authorizing this Court to consider his second or successive habeas corpus application. See In re Cline, 531 F.3d 1249, 1252 (10th Cir. 2008). In the absence of such authorization, the Court lacks jurisdiction to consider the merits of the claims asserted in a second or successive § 2254 application. See id. at 1251. Therefore, the Court must either dismiss the application for lack of jurisdiction or, if it is in the interest of justice, transfer the matter to the Tenth Circuit pursuant to 28 U.S.C. § 1631. See In re Cline, 531 F.3d at 1252. The factors to be considered in deciding whether a transfer is in the interest of justice include whether the claims would be time barred if filed anew in the proper forum, whether the claims alleged are likely to have merit, and whether the claims were filed in good faith or if, on the other

hand, it was clear at the time of filing that the court lacked the requisite jurisdiction. Id. at 1251. Mr. Perez's claims in the instant action are not based on either a new rule of constitutional law or newly discovered evidence as required by § 2244(b)(2). Thus, Mr. Perez's current petition should be dismissed for lack of jurisdiction.

Additionally, I have reviewed Petitioner's "Motion for Medical Needs." See docket no. 35. In the motion, Mr. Perez claims part of his teeth are "lost or missing," and "not in his cell." Id. at 1. Petitioner also asks for a transfer "ASAP." Id. The Court finds Petitioner has filed a successive petition in this case and that Mr. Perez's concerns with respect to his lost or missing teeth are not relevant to the Court's disposition of this federal habeas corpus case. Given the Court's findings, namely the lack of jurisdiction to hear this successive petition, the Court finds Petitioner's "Motion for Medical Needs" should be denied.

Wherefore,

IT IS HEREBY ORDERED THAT:

- 1) the Magistrate Judge's Proposed Findings and Recommended Disposition (docket no. 33) are **ADOPTED**;
- 2) Angel Perez's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (docket no. 1) is **DENIED** and **DISMISSED** for lack of jurisdiction;
- 3) Respondents' "Motion to Hold the Filing of an Answer in Abeyance Pending the Disposition of Respondents' Motion to Dismiss Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2244 as a Second or Successive Petition," (docket no. 21); Petitioner's "Motion for Appointment of Private Lawyer," (docket no. 23); Petitioner's "Motion to Hold Hearing," (docket no. 27); and Petitioner's "Motion for Transfer," (docket no. 28) are **DENIED as moot**;
- 4) Petitioner's "Motion for Medical Needs" (docket no. 35) is **DENIED**; and
- 5) Civil case number 09-112 BB/CEG is hereby closed.



UNITED STATES DISTRICT JUDGE